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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro No. 10-10-04469 (CGM)

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

v.

CAROL L. KAMENSTEIN, individually and in her
capacity as joint tenant, DAVID R. KAMENSTEIN,
individually and in his capacity as joint tenant,
SLOAN G. KAMENSTEIN, and TRACY D.
KAMENSTEIN,

Defendants.

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION AND MOTION OF DEFENDANT
TRACY KAMENSTEIN FOR PARTIAL SUMMARY JUDGMENT**

Defendants Carol L. Kamenstein (“Carol”), David R. Kamenstein, (“David”), Sloan G. Kamenstein (“Sloan”), and Tracy D. Kamenstein (“Tracy”), (collectively “Defendants” or the “Kamensteins”), respectfully submit this statement of material facts pursuant to Local Rule 56.1 in support of their motion for summary judgment dismissing the Complaint of Irving H. Picard, the Trustee for the Liquidation of Bernard L. Madoff Investment Securities, LLC (the “LLC”), for lack of subject matter jurisdiction, and for partial summary judgment dismissing the Complaint¹ as against Tracy because, as set forth herein, she did not receive, directly or indirectly, any transfers during the period of December 11, 2006 through December 11, 2008 (the “Clawback Period”).²

Madoff Business

1. From the 1960s on, Madoff operated two separate business units through his sole proprietorship called Bernard L. Madoff Investment Securities (“BLMIS”). Madoff operated a legitimate trading business which, at times, executed trades equal to 10% of the daily volume on the New York Stock Exchange (the “Legitimate Trading Business”). The Legitimate Trading Business included both proprietary trading (“PT”), which traded securities for its own account, and market-making (“MM”), which created a market in certain securities and acted as a broker-

¹ The Complaint (“Compl.”) in this matter is attached as **Ex. A** to the Declaration of Helen Davis Chaitman dated November 25, 2020 (“Chaitman”). The Answer (“Ans.”) is attached as Chaitman **Ex. B**. The Decision and Orders of this Court dismissing the Trustee’s claims against subsequent transferees dated June 2, 2015 and July 16, 2015, respectively, Adv. Pro. No. 08-01789 (SMB), ECF Nos. 10089, 10679 and 10681, are attached as Chaitman **Exs. C, D and E**.

² The Trustee seeks to claw back withdrawals from four accounts: Account No. 1CM913 (the “David Account”), Account No. 1CM914 (the “Carol Account”), Account No. 1CM596 (the “Tracy Trust Account”) and Account No. 1CM597 (the “Sloan Trust Account”), (collectively “the Kamenstein Accounts”).

dealer for all of the major investment firms. *See* Chaitman **Ex. F** [Nelson Tr.³ 5/8/19 at 63:6-11; 63:14-16], and an investment advisory business (“IA”). Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 63:3-4].

2. All of the banking activity of the Legitimate Trading Business was conducted at the Bank of New York (“BNY”). Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 161:5-8].

3. The PT and MM Businesses were legitimate, and were not involved in an alleged Ponzi scheme. Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 63:2-24 (“Q. So, was the prop side [PT and MM] of the business designed to buy and sell securities? A. Absolutely.”); 64:10-14 (“Q. . . . So, the proprietary trading side of the business bought and sold securities? A. Absolutely. Q. The investment advisory side? A. Never.”); 68:7-16 (“Q. So, the proprietary trading side of the business had a trading platform? A. It had a trading platform and it actually traded. That’s what it did.”); 122:15-21 (“Q. And was the proprietary trading business actually buying stock during that period? A. Yes. The proprietary trading business was buying stock for the proprietary trading desk and for the market-making clients of that side of the business.”); 150:18-25 (“The proprietary trading, in fact, was investing...”); 168:8-17 (the PT and MM business were not involved in a Ponzi scheme, “Q. So out of the whole operation of 180 or so employees, it's 8 to 10 employees who, in your opinion, were involved in a Ponzi scheme; is that right? A. That's correct.”)].

4. Madoff operated his entire business as a sole proprietorship until January 2001. *See* Chaitman **Ex. C** [Memorandum Decision Regarding Omnibus Motion to Dismiss, Adv. Pro. No. 08-01789 (SMB), ECF No. 10089]]; *see e.g.* Chaitman **Ex. A**, [Compl. at ¶ 22].

5. Madoff used the trade name “Bernard L. Madoff Investment Securities” for his sole

³ *Picard v. Carol & Stanley Nelson*, (“*Nelson*”), Adv. Pro. Nos. 10-04377 and 10-04658. The trial of this consolidated case was held on May 8 and 9, 2019. References to the trial transcript appear as “Nelson Tr. [date] at [page reference].”

proprietorship from at least the 1970's. Chaitman **Ex. F** [Nelson Tr. 5/8/19 172: 9:17 (Q. You're aware, are you not, that Mr. Madoff used the tradename Bernard L. Madoff Investment Securities prior to his formation of the LLC? A. Yes. I saw it on many documents, yes.")] Chaitman **Ex. G** [Confirmation Slips dating from 1979 showing the trade name Bernard L. Madoff Investment Securities [10-5420_Defendant_0002412-13]]⁴; *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 610 B.R. 197, 206 (Bankr. S.D.N.Y. 2019). Even the account statement for the 703 account (defined below at ¶ 13) at JPMorgan Chase ("JPMC") for December 2008, the final month of the LLC's operations, lists the account as owned by the trade name "Bernard L. Madoff Investment Securities" without any reference to the LLC. Chaitman **Ex. H** [703 Account Statement for December 2008].

6. In January 2001, Madoff formed the LLC to which he transferred the PT and MM businesses, managed by his two sons. *See* Chaitman **Ex. I** [SEC Amended Form BD]; *see* Chaitman **Ex. A** [Compl. at ¶ 22].

7. In January 2001, Madoff notified BNY and the governmental agencies with which the Legitimate Trading Business dealt that the LLC was formed and would operate the Legitimate Trading Business. *See* the following notification letters all dated January 1, 2001: Chaitman **Ex. J** [Letter from the LLC to BNY; Letter from LLC to the National Securities Clearing Corporation; Letter from the LLC to the Options Clearing Corporation; and Letter from the LLC to the Depository Trust Company].

8. Neither JPMC nor Madoff has any record of any such letter ever being sent to JPMC. Chaitman **Ex. K** [Email dated June 12, 2018 from counsel to Trustee, Maximillian Shifrin

⁴ Attached to the Chaitman Declaration as **Ex. G** are copies of confirmation slips dating from 1979 to the Unflats, who were Madoff customers, showing credits to their account from "Bernard L. Madoff Investment Securities."

to Helen Davis Chaitman].

9. Madoff did not transfer the IA Business to the LLC. *See* Chaitman **Ex. I** [SEC Amended Form BD at 8-10].

10. Madoff did not register with the SEC as an investment advisor until late 2006. *Id.*; *In re Bernard L. Madoff Inv. Secs., LLC*, 424 B.R. 122, 127 (Bankr. S.D.N.Y. 2010), *aff'd* 654 F.3d 229 (2d Cir. 2011).

The Bank Accounts

The LLC Account

11. As set forth above at ¶ 2, the Legitimate Trading Business maintained an account with BNY. Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 161:5-8]. In January 2001, Madoff notified BNY that the LLC was formed and would operate the Legitimate Trading Business. Chaitman **Ex. J** [Letter from the LLC to BNY].

12. The LLC account at BNY was used to fund all of the expenses of the Legitimate Trading Business, including the purchase of securities. Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 161:14-16].

The 703 Account

13. The IA Business placed its customer deposits into an account at JPMC ending in “703” (the “703 Account”). Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 81:20-82:1]; *see e.g.* Chaitman **Ex. L, M, N and O** [Compilation of 703 Account Statements [multiple bates nos.]].

14. As of December 2001, almost a year after the LLC was formed, JPMC customer statements for the 703 Account indicated that the account was held in the name of “Bernard L. Madoff.” Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 14:1-23]; Chaitman **Ex. P** [703 Account Statement for December 2001]. Thereafter, the 703 Account name was in Madoff’s trade name, Bernard L.

Madoff Investment Securities. The 703 Account was never in the name of the LLC and there is not a single document produced by JPMC which suggests that the LLC owned the 703 Account. *See e.g.* Chaitman **Ex. K** [Email dated June 12, 2018 from counsel to Trustee, Maximillian Shifrin to Helen Davis Chaitman]; Chaitman **Ex. Q** [Compilation of 509 Account Statements [multiple bates nos.]]; Chaitman **Ex. R** [Compilation of 703 Account Statements [multiple bates nos.]]; Chaitman **Ex. J** [Letter from the LLC to BNY; Letter from LLC to the National Securities Clearing Corporation; Letter from the LLC to the Options Clearing Corporation; Letter from the LLC to the Depository Trust Company].

15. Moreover, through August 2002, the JPMC customer statements for the 703 account indicated that the account was held in the name of “Bernard L. Madoff.” Chaitman **Ex. S** [703 Account Statement August 1–August 30, 2002]. In September 2002, the 703 account statements from JPMC indicated the customer as BLMIS, the trade name for Madoff’s sole proprietorship. Chaitman **Ex. T** [703 Account Statement August 31–September 30, 2002].

16. Through 2008, the endorsement stamp for checks deposited into the 703 Account read “For deposit only Bernard L. Madoff” (Chaitman **Ex. U** [Checks dated June 11, 2007 [JPMSAI0011455-56], June 14, 2007 [JPMSAI0011482], September 26, 2005 [JPMSAI0007847]]; and *see* Chaitman **Ex. V** [Check dated July 16, 2008 [JPMSAI0013257]]⁵); and deposit tickets for the 703 Account bore the name of the account holder as “Bernard L. Madoff” Chaitman **Ex. W** [Deposit Tickets for the 703 Account [JPMSAI0007846; JPMSAI0009767; JPMSAI0011481; JPMSAI0011453]].

⁵ The deposit check referenced for the year 2008 is an example, and belongs to the account of Zieses Investment Partnership, which was also a customer of Madoff, since the Trustee has not produced copies of the deposit checks made to fund the Kamenstein Accounts for 2008.

17. As late as December 2008, the statements for the 703 Account continue to list the account as owned by the sole proprietorship, BLMIS, without any reference to the LLC. Chaitman **Ex. H** [703 Account Statement for December 2008].

The 509 Account

18. Madoff held an account at JPMC ending in “509” (the “509 Account”). Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 81:20-82:1].

19. The 509 Account was opened and held by Madoff’s sole proprietorship long before the LLC came into existence in 2001. *See e.g.* Chaitman **Ex. X** [509 Account Statement from 1998].

20. There is not a shred of evidence that either the 703 or the 509 Account was ever held in the name of the LLC. On the contrary, all of the evidence indicates that these accounts were always held by Madoff individually. Chaitman **Ex. F** [Nelson Tr. 5/9/19 at 8:14-19, 9:12-10:5-21, 12:5-18:6; 26:24-29:11].

21. The Trustee’s expert witnesses, Bruce Dubinsky and Lisa Collura, have never seen a bank statement for either the 509 Account or the 703 Account in the name of the LLC. Chaitman **Exs. F and Y** [Nelson Tr. 5/8/19 at 171:23-172:8, Nelson Tr. 5/9/19 at 13:7-21; 18:3-5].

22. The 509 account statements and checks were always in the name of Bernard L. Madoff. *See* Chaitman **Ex. Q** [Compilation of 509 Account Statements [multiple bates nos]]; Chaitman **Exs. Z, AA, AB and AC** [Compilation of Checks [multiple bates nos.]].

23. The designation “LLC” never appeared on the statements for either the 703 or the 509 Account. *See* Chaitman **Ex. Q** [Compilation of 509 Account Statements [multiple bates nos.]; *see* Chaitman **Ex. R** [Compilation of 703 Account Statements [multiple bates nos.]].

24. Madoff used the trade name “Bernard L. Madoff Investment Securities” for his sole proprietorship interchangeably with the name “Bernard L. Madoff”, (Chaitman **Ex. Y** [Nelson Tr. 5/9/19 at 18:23-19:10]; Chaitman **Ex. G** [Confirmation Slips [10-5420_Defendant_0002412-13]]; Chaitman **Ex. AD** [July 17, 1991 letterhead of Bernard L. Madoff Investment Securities]), for years prior to the formation of the LLC. *See* Chaitman **Ex. F** [Nelson Tr. 5/8/19 at 172:9-12].

The Trusts

25. On April 11, 1984, David and Carol formed two trusts for the benefit of their children, Tracy and Sloan. *See* Chaitman **Ex. AE** [Trust Agreement for the 1984 Tracy Dara Kamenstein Irrevocable Trust (the “Tracy Trust”). [AMF00267661-696]]; *see* Chaitman **Ex. AF** [Trust Agreement for the 1984 Sloan George Kamenstein Irrevocable Trust (the “Sloan Trust”)[AMF00267776-811]], (collectively, “the Trust Agreements” or “the Trusts”). Carol is the Trustee of the Sloan Trust and David is the Trustee of the Tracy Trust. *See* Chaitman **Ex. AF** at cover, preamble and p. 34 [Sloan Trust [AMF00267776-811 at 776, 777 and 809]]; *see* Chaitman **Ex. AE** at cover, preamble and p. 33 [Tracy Trust [AMF00267661-696 at 697, 662 and 694]]; *see* Declaration of Carol Kamenstein dated November 16, 2020 (the “Carol Dec.”), ¶ 2; *see* Declaration of David L Kamenstein dated November 16, 2020 (the “David Dec.”), ¶ 2; *and see* Declaration of Tracy D. Kamenstein dated November 16, 2020 (the “Tracy Dec.”), ¶ 2.

26. On August 23, 1999, David and Carol opened Accounts No. 1CM597 (the “Sloan Trust Account”) and No. 1CM596 (the “Tracy Trust Account”). David signed the Tracy Trust Account as Trustee, and Carol signed the Sloan Account as Trustee. *See* Chaitman **Ex. AG** [Account Opening Documents for the Tracy Trust Account [AMF00267652-60]]; and Chaitman **Ex. AH** [Account Opening Documents for the Sloan Trust Account [AMF00267767-775]]; *see* Carol Dec., ¶¶ 2-3; *see* David Dec., ¶¶ 5; *and see* Tracy Dec., ¶ 3.

The Kamenstein Accounts

Account No. 1CM913 (the “David Account”)

27. The Trustee seeks to claw back withdrawals from the David Account totaling \$907,300. *See* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM913, Column 10]. The David Account was opened on January 3, 2005. There was an initial transfer into the David Account of \$3,146,642 from an account held by David and Carol, Account No. 1CM247 (the “David and Carol Account”). *See* Chaitman **Ex. AI** [Letter dated December 23, 2004 to Jodi Crupi [AMF00250545]]; *see* Chaitman **Ex. AJ** [Account Opening Documents [AMF00278590-95]]; *see* Chaitman **Ex. AK** [Customer Statement dated December 31, 2004 [MDPTPP01931711]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM913, Line 1].

Deposits into the David Account

28. Three further deposits were made into the David Account: (1) a transfer in the amount of \$686, dated January 31, 2005, from the David and Carol Account; *see* Chaitman **Ex. AL** [Customer Statement dated January 31, 2005 [MDPTPP01931716]]; (2) a check in the amount of \$13,600, dated June 11, 2007, from “Carol Kamenstein and David Kamenstein” to “Bernard L. Madoff Investments”. This check was endorsed “Bernard L. Madoff Investments”, stamped “For Deposit Only Bernard L. Madoff” and was deposited into the 703 Account; *see* Chaitman **Ex. U** [Check [JPMSAI0011455]]; *see* Chaitman **Ex. W** [Deposit Ticket for the 703 Account [JPMSAI0011453]]; *see also* Chaitman **Ex. AM** [Letter dated June 11, 2007 from David to Jodi Crupi [10-04469_KAMENSTEIN_0000108]]; and (3) a check wire transfer in the amount of \$100,000, dated November 21, 2007. *See* Chaitman **Ex. AN** [703 Account Statement, November 2007 [JPMSAB0003858]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM913].

29. There were no check deposits written to the LLC. Chaitman **Ex. U** [Check [JPMSAI0011455]]; *see e.g.* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM913, Column 4].

Withdrawals from the David Account

30. Throughout the life of the David Account, withdrawals were paid by checks drawn from the 509 Account paid by “Bernard L. Madoff” to “David R. Kamenstein.” *See* Chaitman **Ex. AA** [Compilation of Withdrawal Checks for the David Account [multiple bates nos.]].

31. David never received any payments from the LLC. *See id.*

Account No. 1CM914 (the “Carol Account”)

32. The Trustee seeks to claw back withdrawals from the Carol Account totaling \$907,300. *See* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM914, Column 10]. The Carol Account was opened on January 3, 2005. There was an initial transfer into the Carol Account of \$3,146,642 from the David and Carol Account. *See* Chaitman **Ex. AI** [Letter dated December 23, 2004 to Jodi Crupi [AMF00250545]]; *see* Chaitman **Ex. AO** [Account Opening Documents [AMF00278642-48]]; *see* Chaitman **Ex. AP** [Customer Statement dated December 31, 2004 [MDPTPP01931998]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM914, Line 1].

Deposits into the Carol Account

33. Three further deposits were made into the Carol Account: (1) a transfer in the amount of \$686, dated January 31, 2005, from the David and Carol Account (*see* Chaitman **Ex. AQ** [Customer Statement dated January 31, 2005 [MDPTPP01932003]]); (2) a check in the amount of \$13,600, dated June 11, 2007, from “Carol Kamenstein and David Kamenstein” to “Bernard L. Madoff Investments”. This check was signed “Bernard L. Madoff Investments”, endorsed “For Deposit Only Bernard L. Madoff” and was deposited into the 703 Account endorsed “Bernard L. Madoff Investments”, stamped “For Deposit Only Bernard L. Madoff” and deposited into the 703

Account (*see* Chaitman **Ex. U** [Check [JPMSAI0011456]]; *see* Chaitman **Ex. W** [Deposit Ticket for the 703 Account [JPMSAI0011453]]; *see also* Chaitman **Ex. AM** [Letter dated June 11, 2007 from David to Jodi Crupi directing two deposits each in the amount of \$13,600, one into the David Account and one into the Carol Account [10-04469_KAMENSTEIN_0000108]]; (3) a check wire transfer in the amount of \$100,000, dated November 21, 2007. *See* Chaitman **Ex. AU** [703 Account Statement, November 2007 [JPMSAB0003858]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM914].

34. There were no check deposits written to the LLC. Chaitman **Ex. U** [Check [JPMSAI0011456]]; *see e.g.* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM914, Column 4].

Withdrawals from the Carol Account

35. Throughout the life of the Carol Account, withdrawals were paid by checks drawn from the 509 Account paid by “Bernard L. Madoff” to “Carol Kamenstein.” *See* Chaitman **Ex. Z** [Compilation of Withdrawal Checks for the Carol Account [multiple bates nos.]].

36. Carol never received any payments from the LLC. *See id.*

Account No. 1CM597 (the “Sloan Trust Account”)

37. The Trustee seeks to claw back withdrawals from the Sloan Trust Account totaling \$527,400. *See* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597, Column 10]. The Sloan Trust Account was opened on August 23, 1999. Carol signed the account opening documents as Trustee, attaching a copy of the Trust Agreement for the Sloan Trust Chaitman **Exs. AF** and **AH** [Account Opening Documents for the Sloan Trust Account and Trust Agreement for the Sloan Trust [AMF00267767-811]]. There was an initial transfer into the Sloan Trust Account of \$1,782,331 from account number 1CM925, (the “Sloan and Tracy Account”), on September 7, 1999. *See* Chaitman **Ex. AR** [Correspondence dated August 18, 1999 to Linda Schoenheimer

[MADTBB01977201]]; and note dated October 18, 1999 *See* Chaitman **Ex. AH** [AMF00267768]]; *see* Chaitman **Ex. AS** [Customer Statement dated September 1999 [MDPTPP01693674]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597, Line 1].

Deposits into the Sloan Trust Account

38. Two additional transfers were made into the Sloan Trust Account from the Sloan and Tracy Account, the first on September 7, 1999 in the amount of \$1 (*see id.*) and the second on October 29, 1999 in the amount of \$26. *See* Chaitman **Ex. AT** [Customer Statement dated October 1999 [MDPTPP01693676]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597, Lines 2 and 3].

39. The Sloan Trust Account received additional deposits made by several check wire transfers into the 703 Account (*see* Chaitman **Ex. N** [Compilation of 703 Account Statements [multiple bates nos.]]; and by one check in the amount of \$8,000, dated June 14, 2007, from “Sloan Kamenstein” to “Bernard L. Madoff Investments”. This check was endorsed “Bernard Madoff Investments”, stamped “For Deposit Only Bernard L. Madoff” and deposited into the 703 Account. *See* Chaitman **Ex. U** [Check [JPMSAI0011482]]; *see* Chaitman **Ex. W** [Deposit Ticket for the 703 Account [JPMSAI0011481]]; *see* Chaitman **Ex. AU** [703 Account Statement, June 2007 [JPMSAB0003679]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597].

40. There were no check deposits written to the LLC. Chaitman **Ex. U** [Check [JPMSAI0011482]]; *see e.g.* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597, Column 4].

Withdrawals from the Sloan Trust Account

41. Throughout the life of the Sloan Trust Account, withdrawals were paid by checks drawn on the 509 Account paid by “Bernard L. Madoff” to “Sloan G. Kamenstein.” *See* Chaitman **Ex. AB** [Compilation of Withdrawal Checks for the Sloan Trust Account [multiple bates nos.]].

42. Sloan never received any payments from the LLC. *See id.*

Account No. 1CM596 (the “Tracy Trust Account”)

43. The Trustee seeks to claw back withdrawals from the Tracy Trust Account totaling \$452,314. *See* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM596, Column 10]. The Tracy Trust Account was opened on August 23, 1999. David signed the account opening documents as Trustee, attaching a copy of the Trust Agreement for the Tracy Trust. Chaitman **Exs. AE** and **AG** [Account Opening Documents for the Tracy Trust Account and Trust Agreement for the Tracy Trust [AMF00267661-696]]. There was an initial transfer into the Tracy Trust Account of \$1,782,331 from the Sloan and Tracy Account, on September 7, 1999. *See* Chaitman **Ex. AR** [Correspondence dated August 18, 1999 to Linda Schoenheimer [MADTB01977201]]; and *see* Chaitman **Ex. AG** note dated October 18, 1999 [AMF00267653]]; *see* Chaitman **Ex. AV** [Customer Statement dated September 1999 [MDPTTP01692902]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM596, Line 2].

Deposits into the Tracy Trust Account

44. Two additional transfers were made into the Tracy Trust Account from the Sloan and Tracy Account, the first on September 7, 1999 in the amount of \$1 (*see id.*) and the second on October 29, 1999 in the amount of \$26. *See* Chaitman **Ex. AW** [Customer Statement dated October 1999 [MDPTTP01692904]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM596, Lines 1 and 3].

45. The Tracy Trust Account received additional deposits made by several check wire transfers into the 703 Account (*see* Chaitman **Ex. O** [Compilation of 703 Account Statements [multiple bates nos.]]; and by two checks: (1) a check in the amount of \$20,600, dated September 26, 2005 from Tracy Dara Kamenstein to Bernard Madoff. This check was endorsed by “Bernard

Madoff”, stamped “For Deposit Only Bernard L. Madoff” and deposited into the 703 Account (*see* Chaitman **Ex. U** [Check [JPMSAI0007847]]; *see* Chaitman **Ex. W** [Deposit Ticket for the 703 Account bearing the account holder Bernard L. Madoff reflecting check in the amount of \$20,600 [JPMSAI0007846]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM596]); and (2) a check in the amount of \$87,747, dated June 15, 2006, and deposited into the 703 Account. *See* Chaitman **Ex. W** [Deposit Ticket for the 703 Account [JPMSAI0009767]]; *see* Chaitman **Ex. AX** [703 Account Statement, June 2006 [JPMSAB0002995]]; *see* Chaitman **Ex. AW** [Customer Statement, June 2006 [MDPTPP01693384]]; *see also* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM596].

46. There were no check deposits written to the LLC. Chaitman **Ex. U** [Check [JPMSAI0007847]]; *see* Chaitman **Ex. W** [Deposit Ticket [JPMSAI0009767]]; *see e.g.* Chaitman **Ex. A** [Compl., Ex. B, Account No. 1CM597, Column 4].

Withdrawals from the Tracy Trust Account

47. Throughout the life of the Tracy Trust Account, withdrawals were paid by checks drawn from the 509 Account paid by “Bernard L. Madoff” to “Tracy D. Kamenstein.” *See* Chaitman **Ex. AC** [Compilation of Withdrawal Checks for the Tracy Trust Account [multiple bates nos.]].

48. Tracy never received any payments from the LLC. *See id.*

Management of the Kamenstein Accounts

49. Management of all of the Kamenstein Accounts was handled by David. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* Carol Dec., ¶¶ 2, 4, 5; *see* David Dec., ¶¶ 6-12; *and see* Tracy Dec., ¶ 3.

50. All communications on behalf of the Kamensteins with Madoff were from David. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* Carol Dec., ¶¶ 2; *see* David Dec., ¶¶ 2, 3; *and see* Tracy Dec., ¶ 3, 4.

51. All requests for withdrawals from the Kamenstein Accounts were made by David. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* Carol Dec., ¶¶ 2, 5; *see* David Dec., ¶¶ 2, 3, 6; *and see* Tracy Dec., ¶ 3, 4, 5, 8.

52. All instructions for depositing the funds from the withdrawals from the Kamenstein Accounts were made by David. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* David Dec., ¶¶ 2, 3, 6-8.

53. Typically, David would send correspondence to Madoff's office requesting four withdrawals at a time; one from each of the Kamenstein Accounts. This correspondence would include instructions to his book keeper for deposit of the withdrawal checks. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* David Dec., ¶¶ 6-8.

54. David and Carol held a bank account at First Union Bank, which later became Wachovia Bank, ending in 822. This account was nicknamed the "CKDK CAP Account." *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* David Dec., ¶¶ 10; *see* Chaitman **Ex. BA** [Letter dated November 13, 2001 to Jodi Crupi defining the account ending in 822 as the David and Carol Kamenstein "CAP" account [AMF00250573]]; *see* Chaitman **Ex. BB** [Report of Trustee's Expert, Lisa Collura ("Collura Report"): "Reconciliation and Tracing Results" – Kamenstein Accounts, Ex. 6, fn. 6].

55. David and Carol included Sloan and Tracy's names on their bank accounts for estate planning purposes only. Sloan and Tracy never accessed David and Carol's accounts. *See* David Dec., ¶ 9; *and see* Tracy Dec., ¶ 6.

56. Over the course of time, withdrawal checks from all Kamenstein Accounts would mainly be deposited into the CKDK CAP Account. *See* Chaitman **Exs. Z, AA, AB and AC** [Withdrawal Checks dated January 5, 2004 from the David and Carol Account [JPMSAF0019840-41]; from the Sloan Trust Account [JPMSAF0019848-49]; and from the Tracy Trust Account [JPMSAF0019846-47]]; *see* David Dec., ¶ 7.

57. As the Trustee has admitted, during the Clawback Period, all of the deposits were put into the CKDK CAP Account. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see* David Dec., ¶¶ 11-12; *see e.g.* Carol Dec., ¶¶ 7; *see* Chaitman **Ex. BB** [Collura Report, Ex. 6].

58. Even though, under the Trust Agreements, Tracy and Sloan were each to receive the principal and income of the Trusts by age 36, *See* Chaitman **Ex. AE** at 7, Section E.1(c) (Tracy Trust [AMF00267661-696 at 668]); *see* Chaitman **Ex. AF** at 8, Section E.1(c) (Sloan Trust [AMF00267776-811 at 783]), David continued to manage each Trust and each Trust Account as he always had previously. *See* David Dec., ¶ 3. The distributions were not made. *See* David Dec., ¶¶ 3; *and see* Tracy Dec., ¶ 4; *see e.g.* Chaitman **Ex. A** [Compl., Ex. B, Account Nos. 1CM596 and 1CM597]; *see* Chaitman **Ex. BB** [Collura Report, Ex. 6].

Tracy and the Tracy Trust Account

59. Tracy had no involvement in the Tracy Trust Account nor did she receive the benefit of any of the withdrawals from the Tracy Trust Account during the Clawback Period. *See* Tracy Dec., ¶¶ 1, 4, 5, 8, 9; *see* David Dec., ¶¶ 6-8; 10-12.

60. The withdrawal requests from David do not contain any instructions to deposit any of the funds from the withdrawals from the Tracy Trust Account into any of Tracy's bank accounts

or to transfer any of the funds for the benefit of Tracy. *See* Chaitman **Ex. AZ** [Compilation of Withdrawal Requests [multiple bates nos.]]; *see supra* at ¶¶ 56-57.

61. The Trustee admits that none of the withdrawal checks from the Tracy Trust Account were deposited into any of Tracy's bank accounts. *See* Chaitman **Ex. BB** [Collura Report, at Ex. 6].

62. The Collura Report indicates that all of the withdrawals from the Kamenstein Accounts during the Clawback Period were deposited into the CKDK CAP Account. *Id.* Collura was unable to trace any of the withdrawals to Tracy. *Id.* The Trustee has no third-party records to show that withdrawals from the Tracy Trust Account were received by Tracy during the Clawback Period. *Id.*

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